



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,724	03/15/2004	Hansjorg Ander	3868-0156P	2073
2292 7590 09/24/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER DESAL, ANISH P				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
09/24/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/799,724

Applicant(s)

ANDER ET AL.

Examiner

ANISH DESAI

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-24, 26-33 and 36-45 is/are pending in the application.
- 4a) Of the above claim(s) 36 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-24, 26-33 and 38-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments in response to the Office action mailed on 01/22/09 have been fully considered. Support for newly added claims 41, 44, and 45 is found in the specification as originally filled.
2. In view of applicant's amendment, the 35 USC Section 112-second paragraph rejections are withdrawn.
3. In view of applicant's amendment, a new 35 USC Section 112-first paragraph rejection is made.
4. In view of applicant's amendment to claim 21, the 35 USC Section 103(a) rejections based on Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) and Czepel et al. (US 4,277,532) are modified.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claims 42 and 43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

6. With respect to claim 42 recitation "adhesive support", there is no support in the specification to recite "adhesive" support. While there is a support to recite "abhesive" support (see 0032 of US Patent Application Publication of this application), there is no support to recite "adhesive" support. Additionally, there is not support to recite "substantially determines".

7. Regarding claim 43, recitation of "tubular bodies", there is no support in the specification to broadly recite "tubular bodies". While there is a support to recite "abhesive" tubular bodies (see 0038 of US Patent Application Publication of this application), there is no support to broadly recite "tubular bodies". Additionally, there is no support to recite "substantially determines".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 42 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

9. Aforementioned claims recite "substantially determines said round, semi-circular...cross-sectional contour of the material". It is unclear as to what is meant by

Art Unit: 1794

"substantially" or how the depressions or inner cross-sectional contour of the tubular bodies would only "substantially" determine the contour of the material.

10. Additionally, with regards to claim 43, it is not clear how a tubular body would produce V-shaped, quadrangular or triangular contour?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 21, 23, 28, 30, 32, 33, 38, 40, and 42-45 are rejected under 35 U.S.C. 103(a) as obvious over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273).**

12. Regarding claim 21, Wambeke discloses a duct sealing material 17 (see abstract). Further, the sealing material of Wambeke is formed of pressure sensitive adhesive, reactive gels, and water-curable mastics (column 5 lines 34-36).

13. The sealing material 17 of Wambeke is shown below in Figures 5, 6a and 6b.

Fig.5.

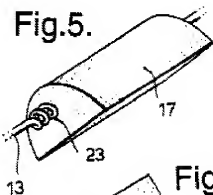


Fig.6a.

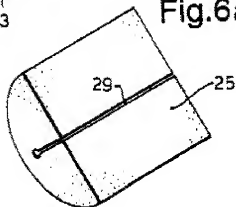
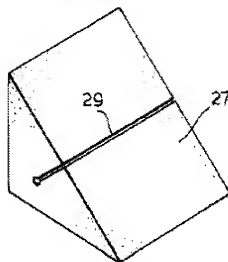


Fig.6b.



14. It is submitted that the cross-sectional contour of the sealing material of Wambeke as set forth in the Figure 5, 6a and 6b is semi-circular, triangular, quadrangular (i.e. rectangular), and polygonal (i.e. rectangular), and has a surface that is bent, curved, or provided with edges corresponding to the cross-sectional contour.

15. As to the recitation "wherein said material is present in the form of "strings, strand, and strips", it is noted that the term "strip" is defined by the Merriam Webster online Dictionary as following:

Art Unit: 1794

Main Entry: ²**strip**

Function: *noun*

Etymology: probably alteration of ³*stripe*

Date: 1548

1 **a** : a long narrow piece of a material **b** : a long narrow area of land or water

2 : AIRSTRIP

3 : a commercially developed area especially along a highway

4 : COMIC STRIP

5 : STRIPTease

16. Based on the aforementioned definition of "strip", the sealing material of Wambeke is interpreted to read on the sealing material is present in a form of a strip as claimed.

17. Regarding claim 21, the difference between the claimed invention and the prior art of Wambeke is that Wambeke is silent as to teaching "wherein said stings, strands or strips have a thickness...wherein said material is produced by polymerization...styrene."

18. However, Bonk discloses a heat-recoverable closure with a crosslinked pressure-sensitive adhesive (PSA) (abstract), wherein the PSA of Bonk comprises acrylate terpolymer and a crosslinking agent (column 2 line 61 and column 3 line 1). Additionally, the PSA of Bonk comprises dimethacrylate (column 5, line 43). Further, the disclosure of Bonk in "Technical Field" and at column 1 lines 45-50 regarding

Art Unit: 1794

hermitically sealing of the cable is interpreted as Bonk's invention is useful in sealing applications.

19. Regarding claim 23, Bonk discloses that the PSA of his/her invention includes a polyfunctional acrylate monomer which is any compound having two or more acrylate or methacrylate functionalities per molecule (column 5, lines 38-40) and discloses pentaerythritol tetra-acrylate (column 5, line 45).

20. With respect to claim 28, it is noted that Bonk discloses that the addition polymerization is preferably accomplished by the use of a photoinitiator and radiation (e.g. UV). According to Bonk, particular techniques of polymerization are disclosed in US Pat 4,181,752 (column 4, lines 30-37) which is incorporated by reference in Bonk reference (column 4 lines 35-37). The US Pat 4,181,752 discloses use of 0.01 to 5 parts of a photoinitiator (column 4, lines 7-8 of US 4,181,752).

21. With respect to claim 30, Bonk discloses that it has been found desirable to incorporate in the adhesive composition reinforcing filler such as metal oxide (column 7, lines 48-53) in the amount of about 2% to about 7% by weight (column 7, lines 59-60).

22. Regarding claim 32, Bonk discloses the adhesive comprising fumed silica (column 7, line 58), which is equated to the colorant.

Art Unit: 1794

23. With respect to claim 33, Bonk discloses the adhesive comprising a crosslinking agent in an amount of from about 0.8% to about 10% by weight (column 3, lines 7-8).

24. With respect to claim 38, it would have been obvious to present the sealing material of Wambeke in the form of rolled or continuous material, motivated by the desire to suitably package the sealing material.

25. It is noted that the primary reference of Wambeke generally desires PSA in the formation of the sealing material, but Wambeke is silent as to teaching a specific PSA. Secondary reference of Bonk provides a necessary PSA.

26. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the PSA of Bonk in the invention of Wambeke, motivated by the desire to practice the invention of Wambeke and provide a suitable high strength sealing.

27. With respect to claim 40, it is noted that Wambeke discloses general conditions of claim, except for the ratio of the width to height. Therefore, selecting the ratio of width to height of Wambeke's sealing material having quadrangular cross-sectional contour would have been obvious, motivated by the desire to suitably form a sealing material that can be used in the duct sealing applications.

28. Regarding newly added claims 42 and 43, the Examiner submits that said claims are directed to product by process limitations. The product by process claims are not

Art Unit: 1794

limited to the manipulations of the recited steps, only the structure implied by the steps.

"Even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

29. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir.1983).

30. In the presently claimed invention, applicant's end product i.e. PSA material or sealing material's shape (cross-sectional contour) as claimed is defined by the process as set forth in claims 42-43.

31. It is submitted that the cross-sectional contour of the sealing material of Wambeke as set forth in Figure(s) 5, 6a and 6b is semi-circular, triangular, quadrangular (i.e. rectangular), and polygonal (i.e. rectangular), and has a surface that is bent, curved, or provided with edges corresponding to the cross-sectional contour. Additionally, Wambeke as modified by Bonk discloses polymerized mass that is

Art Unit: 1794

comprised of applicant's claimed dimethacrylate (column 5, line 43). Based on this, there is no structural and/or compositional difference between the sealing material of applicant and Wambeke as modified by Bonk.

32. With respect to claims 44-45, it is submitted that in absence of any criticality associated with the viscosity values, one would have reasonably selected viscosity of the polymerizable mass including that of presently claimed, in order to properly process the polymerizable mass to produce a sealing material with a desired shape. Specifically, it is noted that if one of ordinary skill in the art selects the polymerizable mass with viscosity that is too low or too high, then it will be difficult to process the polymerizable mass into a suitable shape. For example, if a viscosity is too high, it will be difficult to fill the tubular bodies with the polymerizable mass or to coat the polymerizable mass onto a support. This will also impact the shape of the end product. Thus, it would have been obvious to select the polymerizable mass with desired viscosity including that of presently claimed, motivated by the desire to produce a sealing material with a desired shape.

33. **Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claim 21 above, and further in view of Woods (US 4,414,275).**

34. Wambeke as modified by Bonk is silent as to teaching claim 22.

35. However, Woods discloses a flexible adhesive tape that can be used as sealants (column 2, lines 53-54). According to Woods, the adhesive composition is based upon one or more acrylate (including methacrylate) monomers generally to the art for adhesive purpose (column 3 lines 67-68 and column 4 lines 1-2). Further the adhesive tape of Woods comprises polymerizable acrylate ester monomers such as isobornyl methacrylate (column 4, lines 60-62).

36. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the isobornyl methacrylate in formation of the sealing material, because selection of a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

37. **Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claim 21 above, and further in view of Stanek (US 3,959,052).**

38. Wambeke as modified by Bonk is silent as to teaching claim 24.

39. However, Stanek discloses a wrap around heat shrinkable article. Further at column 5 lines 42-50 Stanek discloses "The surface of the sheet shown in FIG. 1 or the interior of the tubular article shown in FIG.2 are commonly coated with a sealant material adapted to...Suitable sealants are well-known in the art and include materials such as **vinyl acetate polymer**, wax, polyisobutenes and the like."

Art Unit: 1794

40. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select vinyl acetate as a sealing material, because selection of a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

41. **Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claim 21 above, and further in view of Flint (Re. 30,843).**

42. Wambeke as modified by Bonk is silent as to teaching claim 26.

43. However, Flint discloses an epoxy tape useful as an adhesive sealant (abstract). Further at column 1 lines 60-65 to column 2 lines 1-5; Flint discloses epoxy resin that is based on bisphenol A.

44. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the known epoxide such as bisphenol A in the sealing material, because selection of a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

45. **Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claim 21 above, and further in view of Komiyama et al. (US 5,118,567).**

46. Wambeke as modified by Bonk is silent as to teaching claim 27.

47. However, Komiyama discloses an adhesive tape comprising an adhesive layer formed on one surface of the base sheet wherein the adhesive layer comprises a (meth)acrylate polymer, an epoxy resin, a photopolymerizable low molecular weight compound, and a heat activable potential curing agent for the epoxy resin and a photopolymerization initiator for the photopolymerizable low molecular weight compound (abstract).

48. With regards to claim 27, Komiyama discloses that the (meth) acrylate polymer may be a homopolymer of (meth)acrylate (column 3, lines 31-32). Additionally, Komiyama discloses that the term "(meth)acrylate polymer" used herein is meant polymers primarily (at least 50 mol%) comprising structural units derived from at least one (meth) acrylate i.e. acrylate or methacrylate. Examples of the suitable (meth)acrylates include, for example, glycidyl acrylate and methacrylate (column 3, lines 21-27). This disclosure is interpreted as the entire (meth)acrylate polymer can be formed of a structural units derived from glycidyl methacrylate, which reads on the epoxide acrylate is a homopolymer of glycidyl (methacrylate).

49. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the adhesive composition including epoxide

Art Unit: 1794

acrylate such as a homopolymer of glycidyl methacrylate, because selection of a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

50. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claims 21 and 28 above, and further in view of Lautenschlaeger et al. (US 4,814,215).

51. Wambeke as modified by Bonk is silent as to teaching claim 29.

52. However, Lautenschlaeger discloses an adhesive composition, process and product. Further, Lautenschlaeger discloses that various mastic products, for example, sealants and preformed tapes and strips are known for mounting window glass (column 1, lines 37-39). Moreover, Lautenschlaeger discloses that photo-initiators are used to increase the rate of cure in the case of cure by UV radiation (column 11, lines 42-43). Further, Lautenschlaeger discloses typical examples of photoinitiators such as Irgacure 184 (1-hydroxy-cyclohexyl-phenyl-ketone) (column 11, lines 47-48).

53. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose a suitable photoinitiator from the examples of photoinitiators provided by Lautenschlaeger, because selecting a known compound to meet known requirements involves routine skill in the art.

54. **Claims 31, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wambeke et al. (US 5,741,014) in view of Bonk et al. (US 4,731,273) as applied to claim 21 above, and further in view of Czepel et al. (US 4,277,532).**

55. Wambeke as modified by Bonk is silent as to teaching the thickness of the sealing material as claimed and the presence of the flame-proofing agent (claim 31).

56. However, Czepel discloses thermally-expandable sealants for joints, cavities or holes (abstract). Further at column 4 lines 10-15, Czepel discloses a sheet-like joint sealant having a thickness of 1.9 mm, which meets applicant's claimed thickness of 0.5 to 80 mm (claim 21) and 0.5 to 10 mm (claim 39). Further, Czepel's sealant composition includes **up to 80** parts by weight of aluminum hydroxide (column 2 lines 5-20), which is a known flame retardant.

57. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sealing material of Wambeke having the thickness as taught by Czepel, motivated by the desire to produce a sealing material with a desired thickness such that it can be used as a sealing material for joints, cavities or holes. Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the flame-proofing agent in the amount as claimed, motivated by the desire to provide flame retardancy to the sealing material.

Response to Arguments

58. Applicant's arguments filed on 05/22/09 have been fully considered but they are not found persuasive.

59. On pages 11-12 of the amendment, applicant argues that Wambeke do not unambiguously teach that the "discrete portions of sealing material 17" shown in Figs. 4 and 5 are made from PSA. Applicant further argues that although PSA is mentioned as another preferred sealing material in column 5 lines 34-36 of Wambeke, there is no teaching as to how such an adhesive could be formed into the specific shapes shown in Figs. 4 and 5. Applicant asserts that one of ordinary skill in the art would have concluded that mastic or gels as taught by Wambeke would be suitable for making discrete portions rather than considering the use of PSA since Wambeke fails to provide any guidance for selecting suitable adhesives. Applicant further asserts that Wambeke's teaching with respect to PSA can be considered as non-enabling in view of the fact that there are no hints provided by Wambeke with regards to the selection of suitable PSA.

60. The Examiner respectfully disagrees. It is submitted that as set forth in MPEP 2121, when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such reference is found, the burden is on applicant to provide facts rebutting the

Art Unit: 1794

presumption of operability. See *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. Additionally, as noted in MPEP 2121.01, a reference contains an "enabling disclosure" if the public was in possession of the claimed invention before the date of invention. "Such possession is effected one of ordinary skill on the art could have combined the publication's description of the invention with his [or her] own knowledge to make the claimed invention", *In re Donohue*, 766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985). Donohue further states that it "is not, however, necessary that an invention described in a publication shall have actually been made in order to satisfy the enablement requirement and citing *In re Samour*, 571 F.2d 559, 197 USPQ 1, further states "[W]hether or not the claimed invention has been made previously is not essential to the determination that a method of preparing it would have been known by, or would have been obvious to, one of ordinary skill in the art".

61. Based on above, the Examiner submits that applicant has provide no factual evidence on the record that would indicate that the PSA as disclosed by Wambeke would not be suitable for forming "discrete portions" and that the disclosure of Wambeke is non-enabling with regards to the use of PSA. Wambeke clearly discloses that "The sealing material may generally comprise any suitable sealing material." (column 4 lines 35-40) and "Another preferred sealing material is a pressure sensitive adhesive" (column 5 lines 30-35). Accordingly, applicant's arguments are not found persuasive.

62. On pages 12 and 12 of the amendment It is noted that applicant has broadly argued that the prior art of Bonk et al., Czepele et al., Woods, Flint, Komiyama et al. and Lautenschlager et al. do not disclose how the PSA can be converted into discrete portions of sealing material as required by Wambeke et al. Additionally, applicant argues that Bonk et al., Czepele et al., Wood, Stanek, Flint, Komiyama et al., and Lautenschlager et al. are silent with regards to the formation of materials having a defined cross-sectional contour as presently claimed.

63. In response, the Examiner submits that while Bonk et al., Czepele et al., Wood, Stanek, Flint, Komiyama et al., and Lautenschlager et al. do not disclose all the features of the presently claimed invention, these references are used as teaching reference, and therefore, it is not necessary for these secondary references to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather these references teach a certain concept, e.g. polymerizable compound such as dimethacrylate as presently claimed by claim 21 that is taught by Bonk et al. and in combination with the primary reference, discloses the presently claimed invention.

64. On pages 13-14 of the amendment, with respect to claim 38, applicant does not agree with the Examiner's rationale with respect to rejection of this claim. Applicant argues that the sealing material 17 of Wambeke are never present in the form of rolled or continuous material. According to applicant when contemplating the embodiments

shown in Wambeke et al.'s drawings, it is difficult to envision how these portions of sealing material could be present as rolled or continuous material.

65. The Examiner submits that the Wambeke's sealing material and that of applicant has same shape (e.g. same cross-sectional contour). It is submitted that the cross-sectional contour of the sealing material of Wambeke as set forth in the Figure 5, 6a and 6b is semi-circular, triangular, quadrangular (i.e. rectangular), and polygonal (i.e. rectangular), and has a surface that is bent, curved, or provided with edges corresponding to the cross-sectional contour. Additionally, there is no criticality associated with providing the sealing material of the presently claimed invention in the form of rolled or continuous material. Therefore, it is not seen why one would not be able to provide the sealing material of Wambeke in rolled or continuous form motivated by the desire to suitably package the sealing material. Additionally, the Examiner submits that Wambeke's sealing material as set forth in Figures 4, 5, 6a and 6b is continuous. Accordingly, applicant's arguments are not found persuasive.

Conclusion

66. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

67. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

68. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH DESAI whose telephone number is (571)272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

69. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

70. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Art Unit: 1794

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. D./

Examiner, Art Unit 1794

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794